



State of Utah

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER RIGHTS

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To The Lower Fremont River Water Users:

The purpose of this letter is to inform you about two important issues which will be discussed at the Lower Fremont River annual meeting.

The first issue concerns how the commissioner distributes the "A" and "B" water rights. At the beginning of the 1996 irrigation season, the commissioner was instructed to deliver all the rights possible during the runoff; making sure that "A" rights were being met. As the runoff dropped off, he was to deliver "B" water only as long as all the "A" water rights were still full. Once the "A" rights dropped below a full supply any where on the system, he was to completely shut off all the "B" rights. After the system had stabilized, the commissioner could attempt to deliver "B" water in the upper part of the system only if it appeared it could be done without affecting the delivery of the "A" rights to the lower users and if it was approved by the regional engineer.

This past year was a difficult and dry year and yet there was a measurable increase in the diversions at Caineville and Hanksville after the "B" water was cut from the upper canals. Therefore, it appears there is a strong case for the commissioner to continue operating under these instructions in future years.

The second issue has to do with the commissioner's regulation of the water delivered to each water user. There has been concern expressed lately that some water users disregard instructions from the river commissioner or change the diversion regulation set by the river commissioner.

The commissioner on the Lower Fremont River is appointed each year by the State Engineer in accordance with Section 73-5-1 of the Utah, Code Annotated, 1953, as amended. Sections 73-1-14 and 73-5-3 of the code set forth the duties and authority of the commissioner. They state in part:

The river commissioner "shall divide, or cause to be divided, the water ... among the several appropriators entitled thereto in accordance with the right of each respectively, and shall regulate and control, or cause to be controlled, the use of such water by closing or partial closing of the headgates, ... or other controlling works of any ditch, canal, ... or other means of diversion as will prevent the waste of water or its use in excess of the quantity to which any appropriator is lawfully entitled"

The river commissioner "may attach to such controlling works a written notice, properly dated and signed, setting forth that such controlling works have been properly regulated and are wholly under his control, and such notice shall be a legal notice as to the facts therein contained to all parties interested in the division and distribution of the water"



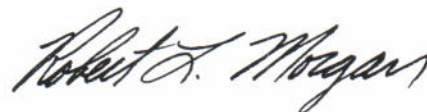
"Any person, who in any way unlawfully interferes with, injures or destroys or removes any dam, head gate, weir, or other appliance for the diversion, apportionment, measurement or regulation of water, or who interferes with any person authorized to apportion water while in the discharging of his duties, is guilty of a misdemeanor, and is also liable in damages to any person injured by such unlawful act."

As stated in the statute quoted above, the commissioner on the Lower Fremont River is responsible to divide the water among the water users according to the water rights of record. In fulfilling this responsibility, he is authorized to change and set headgates (or other methods of controlling diversions) or to instruct water users to change and set headgates (or other methods of controlling diversions) to assure an equitable distribution of water. If necessary, he may lock and place a tag on or near diversion dams or headgates indicating they are being regulated under the direction of the State Engineer. **Anyone who tampers with or changes diversion dams or headgates or other methods of controlling diversions which are under regulation becomes liable for prosecution under the state statutes.**

Cooperation among water users and with the river commissioner is always important to the distribution of water, but it is especially important during dry years such as those we have experienced lately. I am asking that the water users cooperate with each other and with the commissioner. I would hope that it would not be necessary to go beyond the request of this letter. If the water users continue to adjust the commissioners regulation, a measuring device and control structure notice will be issued requiring the construction of substantial control devices that can be locked by the commissioner.

These issues will be discussed at the annual meeting and there will be an opportunity to ask questions. If you have any questions prior to the meeting please contact Kirk Forbush, Regional Engineer, at 896-4429 or Lee Sim, Assistant State Engineer for Distribution, at 538-7380.

Sincerely,



Robert L. Morgan, P.E.
State Engineer

cc: Lee Sim
Kirk Forbush
Bobby Edwards